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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,881	02/05/2004	Robert Thomas Utte	5577-291 RSW920030281US1	5540
53792 7590 08/18/2008 DILLON & YUDELL LLP 8911 N. CAPITAL OF TEXAS HWY. SUITE 2110 AUSTIN, TX 78759			EXAMINER NAJEE-ULLAH, TARIQ S	
			ART UNIT 2152	PAPER NUMBER
			MAIL DATE 08/18/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/772,881

Applicant(s)

UTHE, ROBERT THOMAS

Examiner

TARIQ S. NAJEE-ULLAH

Art Unit

2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This Office action has been issued in response to Applicant's amendment filed May 5, 2008. Claims 1-20 are pending in the case. Claims 1-13 and 16-19 have been amended.

Response to Arguments

2. Applicant's arguments with respect to claims 1-4, 8-13, and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,937,743 to Rassman et al in view of U.S. Patent No. 7,047,292 to Stewart et al (Stewart hereinafter) have been considered but are moot in view of the new ground(s) of rejection.

3. Applicant's arguments with respect to claims 1, 4-7, and 13-20 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,367,670 to Ward et al in view of Stewart have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 6-7, 13-16 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent Application Publication 2002/0144147 to Basson et al (Basson hereinafter).

Regarding claims 1, 13 and 18, Basson teaches **associating a priority indication with at least some physical resources in a computer system** (Basson, fig. 1, 130, 133, 137; fig. 2, 221,222); **identifying the physical resources associated with the plurality of alert conditions** (Basson, pg. 2, par. 16, 20 *Prioritizer 143 marks these outgoing pieces of network information with a particular label. This label alerts other network resources that the network information should be prioritized*; fig. 3, 310, 340, 360); and **selecting an alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources** (Basson, pg. 2, par. 16; fig. 4, 420, 495).

Regarding claim 2, Basson discloses the invention substantially as described in claim 1 above including, **wherein associating the priority indication with at least some physical resources comprises prioritizing at least some of the physical resources relative to each other** (Basson, pg. 2, par. 16, 20 *Prioritizer 143 marks these outgoing pieces of network information with a particular label. This label alerts other network resources that the network information should be prioritized*; fig. 4, 420, 495; fig. 3, 310, 340, 360).

Regarding claim 6, Basson discloses the invention substantially as described in claim 1 above including, **wherein associating the priority indication with at least some physical resources comprises assigning a priority indication based on whether a physical resource is a server of information for predetermined software applications in the computer system** (Basson, fig. 1, 130, 133, 137; fig. 4, 405,420, 495, fig. 5).

Regarding claim 7, Basson discloses the invention substantially as described in claim 1 above including, **wherein associating the priority indication with at least some physical resources comprises assigning a priority indication based on whether a physical resource is a predetermined server of information in the computer system** (Basson, fig. 1, 130, 133, 137; fig. 4, 405, 420, 495, fig. 5).

Regarding claims 14 and 20, Basson discloses the invention substantially as described in claims 13 and 18 above including, **wherein the resource management system is configured to notify a user of the selected alert condition** (Basson, pg. 7, par. 66).

Regarding claims 15 and 19, Basson discloses the invention substantially as described in claims 13 and 18 above including, **wherein the resource management system is configured to initiate a corrective action based on the selected alert condition** (Basson, pg. 2, par. 16, 20 *Prioritizer 143 marks these outgoing pieces of network information with a particular label. This label alerts other network resources that the network information should be prioritized*; fig. 3, 310, 340, 360).

Regarding claim 16, Basson discloses the invention substantially as described in claim 13 above including, **wherein the resource management system is configured to receive the plurality of alert conditions from at least some of the physical resources** (Basson, pg. 2, par. 16, 20 *Prioritizer 143 marks these outgoing pieces of network information with a particular label. This label alerts other network resources that the network information should be prioritized*; fig. 3, 310, 340, 360).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication 2002/0144147 to Basson et al (Basson hereinafter) in view of US Patent No. 6,047,322 to Vaid et al (Vaid hereinafter).

8. Regarding claim 3, Basson discloses the invention substantially as described in claim 1 above including, **wherein associating the priority indication with at least some physical resources comprises prioritizing at least some of the physical resources based on their importance to operation of a business** (Basson, fig. 1, 130, 133, 137; fig. 2, 221,222). Basson does not explicitly teach **prioritizing at least some of the physical resources based on their importance to operation of a business**. Vaid teaches **prioritizing at least some of the physical resources based on their importance to operation of a business** (Vaid, col. 10, lines 25-26). Basson and Vaid are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Vaid's method and apparatus for quality of service management with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to provide more quality to telecommunication

services (Vaid, col. 2, lines 45-54).

9. Claims 4-5, 9-12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication 2002/0144147 to Basson et al (Basson hereinafter) in view of US Patent No. 5,367,670 to Ward et al. (Ward herein after).

Regarding claim 4, Basson discloses the invention substantially as described in claim 1 above including, **wherein associating the priority indication with at least some physical resources comprises prioritizing at least some of the physical resources based on an affect of their failure on other resources in the computer system** (Basson, fig. 1, 130, 133, 137; fig. 2, 221,222). Basson does not explicitly disclose **prioritizing at least some of the physical resources based on an affect of their failure on other resources in the computer system**. Ward teaches **prioritizing at least some of the physical resources based on an affect of their failure on other resources in the computer system** (Ward, col. 5, lines 15-20; Ward discloses if a component experiences a failure or exhibits characteristics that indicate it may experience a failure, the system manager detects the failure or characteristic indicative of a potential failure and reports the failure or characteristic indicative of a potential failure as an alert in a manner such that corrective action can be taken.).

Basson and Ward are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Ward's computer system manager

for monitoring events and operating parameters and generating alerts with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to improve the performance of the network management system and provide greater management capability improving the response time to failure alerts allowing corrective action to be performed (Ward, col. 2, lines 11-35).

Regarding claim 5, Basson discloses the invention substantially as described in claim 1 above including, **wherein associating the priority indication with at least some physical resources comprises assigning a priority indication based on whether a physical resource is a server of information for predetermined computers in the computer system** (Basson, fig. 1, 130, 133, 137; fig. 2, 221,222). Basson does not explicitly disclose **assigning a priority indication based on whether a physical resource is a server of information for predetermined computers in the computer system**. Ward teaches **assigning a priority indication based on whether a physical resource is a server of information for predetermined computers in the computer system** (Ward, col. 2, lines 43-49; Ward discloses a network operating system/network manager controls and manages information transfers between the file server and the console and a system manager manages the computer system board by monitoring signals transferred along the system bus, determining alert conditions based upon the monitored signals, i.e. priority indicators.).

Basson and Ward are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Ward's computer system manager

for monitoring events and operating parameters and generating alerts with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to improve the performance of the network management system and provide greater management capability improving the response time to failure alerts allowing corrective action to be performed (Ward, col. 2, lines 11-35).

Regarding claims 9 and 17, Basson discloses the invention substantially as described in claims 1 and 13 above. Basson does not explicitly disclose **further comprising determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied, wherein the selecting an the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied.**

Ward teaches **further comprising determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied, wherein the selecting an the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied** (Ward, col. 2, lines 62-66; Ward discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates.).

Basson and Ward are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Ward's computer system manager for monitoring events and operating parameters and generating alerts with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to improve the performance of the network management system and provide greater management capability improving the response time to failure alerts allowing corrective action to be performed (Ward, col. 2, lines 11-35).

Regarding claim 10, Basson discloses the invention substantially as described in claim 9 above. Basson does not explicitly disclose **wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a number of queued alert conditions for the resource management system satisfies a threshold number.** Ward teaches **wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a number of queued alert conditions for the resource management system satisfies a threshold number** (Ward, col. 2, lines 62-66; Ward discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates.).

Basson and Ward are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Ward's computer system manager for monitoring events and operating parameters and generating alerts with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to improve the performance of the network management system and provide greater management capability improving the response time to failure alerts allowing corrective action to be performed (Ward, col. 2, lines 11-35).

Regarding claim 11, Basson discloses the invention substantially as described in claim 9 above. Basson does not explicitly disclose **wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a waiting time for alert conditions to be handled by the resource management system satisfies a threshold time**. Ward teaches **wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a waiting time for alert conditions to be handled by the resource management system satisfies a threshold time** (Ward, col. 2, lines 62-66; Ward discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates.).

Basson and Ward are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Ward's computer system manager for monitoring events and operating parameters and generating alerts with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to improve the performance of the network management system and provide greater management capability improving the response time to failure alerts allowing corrective action to be performed (Ward, col. 2, lines 11-35).

Regarding claim 12, Basson discloses the invention substantially as described in claim 9 above. Basson does not explicitly disclose **wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a threshold rate of alert conditions are received for the resource management system**. Ward teaches **wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a threshold rate of alert conditions are received for the resource management system** (Ward, col. 2, lines 62-66; Ward discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates.).

Basson and Ward are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been

obvious to a person of ordinary skill in the art to use Ward's computer system manager for monitoring events and operating parameters and generating alerts with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to improve the performance of the network management system and provide greater management capability improving the response time to failure alerts allowing corrective action to be performed (Ward, col. 2, lines 11-35).

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication 2002/0144147 to Basson et al (Basson hereinafter) in view of US Patent No. 6,643,367 to White-Hauser.

Regarding claim 8, Basson discloses the invention substantially as described in claim 1 above including, **wherein associating the priority indication with at least some physical resources comprises assigning a priority indication based on the physical resources' current placement in a computer system that is dynamically configured and provisioned to handle on-demand needs** (Basson, fig. 1, 130, 133, 137; fig. 2, 221,222). Basson does explicitly disclose **a computer system that is dynamically configured and provisioned to handle on-demand needs**. White-Hauser teaches **a computer system that is dynamically configured and provisioned to handle on-demand needs** (White-Hauser, col. 2, lines 14-35).

Basson and White-Hauser are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use White-Hauser's dynamic

management of prioritization of communications with demand for resources with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to efficiently and automatically allocate resources based on dynamic and scheduled changes in priority and demand for resources (White-Hauser, col. 2, lines 14-19).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US 5,935,218 to Beyda et al; US 6,046,980 to Packer; US 6,233,645 to Chrysos et al; US 2003/0177176 to Hirschfeld et al.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARIQ S. NAJEE-ULLAH whose telephone number is (571)270-5013. The examiner can normally be reached on Monday through Friday 8:30 - 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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